

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

United States of America

v.

Case No. 2:11-cr-171

Marco Estrada, et al.

ORDER

The government has filed a motion (Doc. 30) to amend the indictment to correct the spelling of defendant Batten's last name. His last name is spelled "Batton" in the indictment, and the correct spelling is "Batten," as defense counsel indicated in pretrial proceedings.

Pursuant to Fed.R.Crim.P. 36, this court may correct errors in the record arising from oversight or omission. It is also generally held that misnomers are usually mistakes of form which may be corrected by amending the indictment. See, e.g., United States v. Mason, 869 F.2d 414, 417 (8th Cir. 1989)(district court properly ordered amendment of indictment to reflect the true middle initial of the defendant's name; amendment did not change the substance of the indictment and defendant was not prejudiced by the amendment); United States v. Perez, 776 F.2d 797 (9th Cir. 1985)(indictment may be amended to correct the name of the defendant). Here, the proposed amendment does not alter the nature of the charged offense. Correcting the defendant's name will ensure that the court's records are accurate and that the defendant's case is correctly processed through the legal system. The motion is granted, and the indictment and other records in this case are hereby amended to substitute the name "Batten" in place of the name "Batton."

Defendant Batten has filed a motion (Doc. 31) to extend the

time for filing motions, for holding pretrial hearings and for trial, which is currently scheduled on September 7, 2011. Counsel states that additional time is needed to complete discovery, to investigate the case, and to interview witnesses. The government does not oppose the request for a continuance.

The court finds pursuant to 18 U.S.C. §3161(h)(7) that a continuance is warranted in the interests of justice and that the need for a continuance outweighs the best interests of the defendant and the public in a speedy trial. Additional time is required to complete discovery and to investigate the case. The court also notes that the instant case involves four defendants charged with conspiracy to distribute in excess of one thousand kilograms of marijuana over almost a one-year period. Considering the significant and complex nature of the charge, it is unreasonable to expect adequate consideration of discovery or preparation for pretrial proceedings and trial prior to the current trial date or the time limits established by 18 U.S.C. §3161. Defense counsel requires additional time to obtain and review discovery materials and to prepare for trial despite the exercise of due diligence. The failure to grant a continuance would deny counsel the time reasonably necessary to adequately and effectively prepare for trial. The motion is granted, and the trial will be continued as to all defendants joined in the indictment. The trial is continued to November 14, 2011, at 9:00 a.m. Pretrial motions shall be filed on or before September 30, 2011. Responses to motions shall be filed on or before October 17, 2011.

Date: August 8, 2011

s/James L. Graham
James L. Graham
United States District Judge